



REPUBLIC OF KENYA



KENYA LAW
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**Muchiri v Jap Assembler Kenya Limited (Miscellaneous Civil Application
E006 of 2025) [2025] KEELRC 1725 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1725 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
MISCELLANEOUS CIVIL APPLICATION E006 OF 2025**

B ONGAYA, J

JUNE 12, 2025

BETWEEN

CHARITY MUTHONI MUCHIRI APPLICANT

AND

JAP ASSEMBLER KENYA LIMITED RESPONDENT

RULING

1. The applicant filed an application by the Notice of Motion dated 06.01.2025 through K.Mundia & Company Advocates. The application was under Articles 50(1), 159, sections 3A, 79G and 95 of the [Civil Procedure Act](#), Order 42 and 51 (1) of the Civil Procedure Rules, 2010 and all other enabling provisions of law. The applicant prayed for the following orders:
 - a. That this application be certified as urgent and service thereof be dispensed with in the first instance.
 - b. That this Honourable Court be pleased to grant the applicant/intended appellant leave to lodge an appeal out of time against the decision by Honourable B. Ojoo (CM) at the Chief Magistrate's Court at Mavoko in MCELRC No E005 of 2023 being Charity Muthoni Muchiri Vs. Jap Assembler Kenya Limited.
 - c. That upon grant of leave to appeal out of time, the memorandum of appeal attached herewith be deemed as duly filed.
 - d. That the costs of this application do abide the result of the said appeal.
2. The application is supported by the affidavit of Kenneth Mundia, Advocate, and made on the following grounds:
 - a. That the applicant had initially filed an appeal on time, but technical error with the e-filing portal occurred, necessitating an urgent follow up with the ICT team.



- b. That the technical issues arose with the advocate's e-filing portal, which read an individual account instead of a law firm account, resulting in incorrect identification of the applicant/intended appellant.
 - c. That the applicant's advocates demonstrated good faith and diligence by promptly attempting to resolve the technical issues with the ICT team, despite the delays this caused.
 - d. That the applicant/intended appellant intends to appeal the said judgment, which appeal has an overwhelming chance of success should the appeal be heard and determined.
 - e. That the appeal has substantial merit and it is in the interest of justice that the Court allows the appeal to be heard and determined on its merits rather than being dismissed on a technicality.
 - f. That refusing to grant leave to file the appeal would result in a grave injustice as the technical error was beyond the applicant's control and the appeal addresses significant legal and factual issues.
 - g. That the application has been filed without inordinate delay and denying the applicant leave to file the appeal out of time would infringe on the fundamental right to a fair hearing as enshrined under article 50 of *the constitution* of Kenya.
 - h. That the balance of convenience and equities favours the applicant as the delay was caused by technical difficulties and not by any intentional or negligent conduct on the part of the applicant.
 - i. That granting leave to file the appeal out of time will not prejudice the respondent in any way as the respondent will still have the opportunity to respond to the appeal.
 - j. That it is in the interest of justice and fairness that the applicant be granted the opportunity to present the appeal and have it heard on its merits.
3. The respondent filed the replying affidavit of Elizabeth Karanja sworn on 07.04.2025 and drawn by Kieti Law LLP. The application was opposed upon the following grounds:
- a. That the law provides that an appeal ought to have been filed within 30 days which fell on 18.10.2024 and the applicant failed to file the memorandum of appeal within the prescribed period.
 - b. That the applicant has not disclosed a valid explanation for the delay and that her justification for the delay being that the advocates encountered technical issues with the e-filing portal has not been satisfactorily explained.
 - c. The applicant has not demonstrated that the alleged issue was unavoidable and beyond reasonable resolution.
 - d. The screenshot annexed by the applicant merely shows that an attempt was made to file the memorandum of appeal on 18.10.2024, the last day for filing. The screenshots do not indicate multiple attempts to file, or an urgency in resolving the issue.
 - e. The applicant has not produced any evidence to demonstrate that efforts were made to escalate or resolve the alleged technical issue. That no evidence of correspondence with the court registry, ICT team or any follow-up attempts have been annexed.



- f. That the applicant has not explained the delay between the alleged failed filing attempt on 18.10.2024 and the eventual filing of the present application seeking leave to file an appeal out of time on 21.01.2025.
 - g. That the applicant has failed to explain why alternative filing methods such as manual filing or filing via the court's email address were not explored. The respondent stated that in the unlikely event that indeed there were technical issues encountered, the failure to explore alternatives demonstrates a lack of diligence and interest in pursuing the appeal.
 - h. Equity does not aid the indolent and the applicant has not acted with the diligence required to warrant this court's intervention.
 - i. The applicant has not demonstrated that the appeal raises any significant legal or factual issues.
 - j. The respondent is entitled to finality of litigation and it would be unjust to allow the applicant to benefit from their delay and lack of diligence.
4. The applicant filed the Further Affidavit of Kenneth Mundia sworn on 22.04.2025, it was stated and urged as follows:
- a. That the judgement in MCELRC No. E005 of 2023 was delivered on 18.09.2024 but was uploaded on 01.10.2024 and this delay impacted the applicant's ability to promptly seek appeal documentation.
 - b. That the applicant's advocate's judiciary e-filing account had been erroneously classified as an individual account rather than a law firm account and made it difficult for him to submit the letter requesting certified copies of proceedings to facilitate the appeal.
 - c. The applicant's advocate visited Mavoko Law Courts on 04.10.2024 to personally request certified copies of proceedings which were provided to him on 16.10.2024.
 - d. The applicant's advocate proceeded to file the memorandum of appeal on 18.10.2024, however, on submission the judiciary e-filing system incorrectly generated his law firm name as the appellant, instead of the actual applicant's name, rendering the filing defective.
 - e. The advocate visited the judiciary ICT offices on 18.10.2024 to seek rectification. However, the officer responsible for handling such matters was in a meeting, it being a Friday, he was advised to return on 21.10.2024.
 - f. The advocate returned on 21.10.2024 and issued the judiciary ICT offices a formal request detailing the necessary correction and engaged the concerned officials, seeking an expedited resolution.
 - g. Despite assurances from the ICT team, the issue was not resolved and when the advocate visited the officials, he was directed to submit an email request, which he did on 13.11.2024 and the same was responded to on 14.11.2024 with a request for additional supporting documents to rectify his account status.
 - h. The advocate states that despite his rigorous follow-ups, the issue remained unresolved with the officials explaining that the modification was technically complex as it affected multiple active cases.
 - i. That the issue was eventually resolved and the ICT team confirmed this via email sent on 20.01.2025.



- j. That the delay in filing the appeal was not due to negligence or inaction, but was caused by systemic failures beyond the applicant's control and the applicant has acted with utmost diligence in the pursuit of the appeal and have done everything reasonably expected of them, given the circumstances.
5. The parties filed their respective submissions. The Court has considered parties' respective positions and returns as follows:
- a. Rule 12(2) of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides that an appeal from the magistrates court be filed within 30 days from the date of the decision is delivered. Rule 18 provides that the Court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any document relating to an appeal. Accordingly, the Court may, for justified cases, extent the 30 days for filing an appeal from the judgment or ruling of the magistrate's Court.
 - b. In the instant case, the replying affidavit confirms that the appellant's advocate made attempts to file the memorandum of appeal on the last due date being on 18.10.2024. By the further supporting affidavit, the applicant has shown the effort made to resolve the e-filing and mapping problem that was encountered. The email exhibited shows that the issue was resolved on 20.01.2025 and the instant application filed on 21.01.2025. The Court has considered that material evidence and flow of events and returns that the applicant took due prompt steps towards filing the appeal but due to the e-filing and mapping challenges the delay occurred. Once the challenge was resolved, the applicant took prompt action to file the instant application. The Court therefore finds that the delay is fully explained and the applicant has shown valid circumstances that justify the extension of time for filing the memorandum of appeal.
 - c. The Court has noted that the applicant failed to invoke the relevant rules of procedure applicable to the Court but in any event there exist a justification to extent the time. The exhibited draft memorandum of appeal disclose arguable grounds of appeal.
 - d. While urging and submitting that the applicant ought to have explored alternatives to e-filing, rule 24 (1) is categorical thus, "24.(1) A party shall file pleadings electronically and shall, within seven days of the filing, supply the Court with one hard copy of the pleadings or such number of hard copies as the Court may direct." It therefore appears that the mandatory filing mode was the e-filing.
 - e. The Court considers that the appeal should succeed and the costs to abide the outcome of the proposed appeal.
6. In conclusion, the application is hereby determined with orders as follows:
- a. The time to file and serve the memorandum of appeal against the trial Court's judgment delivered on 18.09.2024 is hereby extended to by close of 20.06.2025.
 - b. The costs of the application to abide the outcome of the proposed appeal.
 - c. The Deputy Registrar to forthwith return the case file to the Machakos Subregistry.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 12TH JUNE, 2025.

BYRAM ONGAYA,



PRINCIPAL JUDGE

